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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,949	04/15/2004	Ralph E. Wesinger JR.	NES-014CON	8228

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SIERRA PATENT GROUP, LTD.  
1657 Hwy 395, Suite 202  
Minden, NV 89423

EXAMINER
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DARNO, PATRICK A

ART UNIT	PAPER NUMBER
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2163

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/04/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/825,949

Applicant(s)

WESINGER ET AL.

Examiner

Patrick A. Darno

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date See Continuation Sheet.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Claims 1-18 have been cancelled by a preliminary amendment. Claims 19-33 were added in the same preliminary amendment. Therefore, claims 19-33 are now pending in this office action.

#### *Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 19-28 are rejected under 35 U.S.C. 101 because claims are directed to non-statutory subject matter.

With respect to claim 19, the claim is rejected under 35 U.S.C. 101 because the invention, as claimed, appears to be directed to merely an abstract idea. The Examiner makes this assertion because the claim simply recites “receiving a request...”, “creating an entry...”, “receiving content...”, “receiving a category...”, “storing said content...”, and “associating said entry...” with no attempt to tie all of the methods steps together in order to carry out a final, conclusionary, and tangible method step.

Since the claim presented by the applicant is simply a representation of an abstract idea, the claims are not covered by the statutory categories of patentable subject matter set forth in 35 U.S.C. 101.

However, an abstract idea is categorized as one of three judicially created exceptions to patentable subject matter (the three exceptions are Laws of Nature, Natural Phenomena, and Abstract Ideas). The courts have concluded that in order to patent one of the three judicial exceptions to the statutory categories of invention the applicant must show that the claimed

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invention has a practical, real-world application that produces a useful, concrete, and tangible result (State Street, 149 F.3d at 1373-74, 47 USPQ2d at 1601-02).

In order to overcome this rejection, it is required that the Applicant amend claim <sup>p.2</sup>19 such that claim <sup>p.2</sup>19 provides a final, conclusionary, and tangible method step. This final step should tie together all previously recited method steps. Finally, the claimed invention as a whole must set forth a practical application of the invention, which provides a useful, concrete, and tangible result. Correction of this deficiency is required.

Claims 20-23 are rejected because they fail to resolve the deficiencies of claim 19.

Claim 24 is rejected under the same reasons set forth in the rejection of claim 19.

Claims 25-28 are rejected because they fail to resolve the deficiencies of claim 24.

With respect to claim 29, the claim appears to be directed to an apparatus in the form of a web server. However, the claims are not actually limited to any physical articles or objects. It appears that the Applicant is seeking to patent particular programmed functionality of the components rather than the components themselves. Specifically, the claim limitations of “receive a request from a user...”, “create an entry...”, “receive content associated...”, “receive a category...”, “store said content...”, and “associate said entry...” all appear to be directed to software subroutines. Since the claim limitations are indeed directed to programmed functionality and not the components of an apparatus themselves, the claimed programmed functionality must have a final result achieved, which is useful, concrete, and tangible. See the rejections given to claim <sup>p.2</sup>19 for further guidance as to the type of amendments that need to be made in order to overcome the rejection.

Claims 30-33 are rejected because they fail to correct the deficiencies of claim 29.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 19-33 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 5,706,507 issued to Robert Jeffrey Schloss (hereinafter “Schloss”).

**Claim 19:**

Schloss discloses a method for creating entries containing non-textual content in an on-line database containing:

receiving a request from a user to create an entry in an on-line database (*Schloss: column 2, lines 43-51 and column 6, lines 1-6 and column 9, line 46-column 10, line 3 and Fig. 10 and Fig. 11; Note specifically in column 9, lines 63-64 that “multiple lists may be created”. These lists are entries in an on-line database.*);

creating an entry in the on-line database (*Schloss: column 9, lines 63-64*);

receiving content associated with the entry, said content including non-textual information (*Schloss: column 4, line 57-column 5, line 2 and column 8, lines 20-23; Note specifically that graphics can be received in addition to text.*);

receiving a category defined by said user for said entry and a description of said category (*Schloss: column 2, lines 43-51 and column 6, lines 1-6 and column 9, line 46-column 10, line 3 and Fig. 10 and Fig. 11*);

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storing said content in said entry (*Schloss: column 4, lines 39-42 and column 4, lines 59-61; Since the data is already stored in the database, there must have been some means to store it in the database.*); and

associating said entry with said category (*Schloss: column 4, lines 39-42 and column 4, lines 59-61; Surely a knowledge base that characterizes content associates some entry with some category.*).

**Claim 20:**

Schloss discloses all the elements of claim 19, as noted above, and Schloss further discloses wherein said non-textual content comprises graphics (*Schloss: column 8, lines 20-23; Note specifically that the non-textual context is graphics.*).

**Claim 21:**

Schloss discloses all the elements of claim 19, as noted above, and Schloss further discloses the act of allowing said user to index said selected entry in said on-line database with at least one user-defined keyword (*Schloss: column 6, lines 1-6*).

**Claim 22:**

Schloss discloses all the elements of claim 19, as noted above, and Schloss further discloses the act of allowing said user to add a URL to said entry in said on-line database (*Schloss: column 5, lines 7-10 and column 9, lines 46-58; The advisory servers are identified by URL and the user can add advisory services to a list stored in a database.*).

**Claim 23:**

Schloss discloses all the elements of claim 19, as noted above, and Schloss further comprising the act of allowing said user to add a hyperlink to said entry in said on-line database

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*(Schloss: column 4, lines 26-29 and column 5, lines 7-10 and column 9, lines 46-58; The advisory servers are identified by URL and the user can add advisory services to a list stored in a database. Furthermore, adding hyperlinks and URLs to databases is well known in the art.).*

**Claim 24:**

Claim 24 is rejected under the same reasons set forth in the rejection of claim 19.

**Claim 25:**

Claim 25 is rejected under the same reasons set forth in the rejection of claim 20.

**Claim 26:**

Claim 26 is rejected under the same reasons set forth in the rejection of claim 21.

**Claim 27:**

Claim 27 is rejected under the same reasons set forth in the rejection of claim 22.

**Claim 28:**

Claim 28 is rejected under the same reasons set forth in the rejection of claim 23.

**Claim 29:**

Claim 29 is rejected under the same reasons set forth in the rejection of claim 19.

**Claim 30:**

Claim 30 is rejected under the same reasons set forth in the rejection of claim 20.

**Claim 31:**

Claim 31 is rejected under the same reasons set forth in the rejection of claim 21.

**Claim 32:**

Claim 32 is rejected under the same reasons set forth in the rejection of claim 22.

**Claim 33:**

Claim 33 is rejected under the same reasons set forth in the rejection of claim 23.

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*Conclusion*

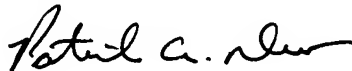
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick A. Darno whose telephone number is (571) 272-0788. The examiner can normally be reached on Monday - Friday, 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on (571) 272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PAD

Patrick A. Darno  
Examiner  
Art Unit 2163



DON WONG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100



Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :11132006, 10252006, 07202006, 02022006, 10262005, 08172005, 05052005, 03022005, .